

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

KAYLA BUTTS, Individually and on behalf  
of her daughter A.F., a minor,

Plaintiffs,

v.

BERKELEY MEDICAL CENTER, et al.,

Defendants.

Case No. 3:16-cv-00053 (GROH)

**PETITION TO APPROVE SETTLEMENT AND  
SEAL PORTIONS OF THE SETTLEMENT DOCUMENTS**

COMES NOW plaintiff individually and on behalf of her daughter A.F., a minor and asks this Court to approve this Petition for Approval of minor's partial settlement. On or about March 22, 2017, this Court appointed Tracy Weese, Esq. to serve as guardian ad litem for A.F., the minor child. The Court also directed counsel for plaintiff to forward any appropriate information and all proposed settlement distribution documents to the guardian ad litem and this has been done. Plaintiff's counsel also met with Ms. Weese and Mr. Jake Duvall (the representative of Forge Consulting, LLC) participated by telephone. As a result, plaintiff seeks the following in conjunction with approval of the partial settlement.

The Plaintiff is informed and believes that the minor, A.F., is a disabled person as defined by Social Security Act Sec. 1614(a)(3) (42 U.S.C. 1382c(a)(3)) and as a consequence of that disability is entitled to and in fact is currently receiving the public health benefits commonly known as Medicaid. It has come to the Plaintiff's attention that the receipt of funds by or on the behalf of A.F., either as a lump sum or by a structured settlement, will result in the loss of those Medicaid benefits. It is in the best interest of A.F. to retain said beneficiary's eligibility for benefits under the Supplemental Security Income (SSI) and/or Medicaid programs and any other

“means-based” benefit program which may be available to assist A.F. with medical care and support needs.

Federal statutory and regulatory guidelines (42 U.S.C. §1396p(d)(4)(A)) provide that a trust for a disabled person under age 65 (i) which contains that person’s assets, (ii) which is established for that person’s benefit by the person’s parent, grandparent, legal guardian or a court, and (iii) which provides that the state will receive all amounts remaining in the trust upon the death of the disabled person up to the amount of Medicaid assistance provided to the person by the state since the inception of the trust, will not be considered assets of the disabled person for Medicaid or SSI qualification purposes.

Plaintiff is informed and believes that pursuant to 42 U.S.C. §1396p(d)(4)(A), that this Court may establish a Special Needs Trust for the benefit of A.F. to hold and manage the settlement funds. Inasmuch as such statutes and regulations allow for eligibility for such programs while preserving the recipient’s assets in a discretionary special needs trust designed to meet the needs of such disabled person not otherwise met by governmental programs, it is in the best interest for such a special needs trust to be established and for all settlement funds, including all funds and assets currently held by the Trustee for A.F. and any settlement payments received in the future to the Aleyah Marie Ferguson Irrevocable First Party Special Needs Trust, as presented to the Court. Further information in regards to the trust planning as well as a copy of the trust is attached hereto. The net settlement proceeds of \$ \_\_\_\_\_ shall be placed into the Special Needs Trust.

Plaintiff will bring all documents to the Court the morning of the Hearing.

Further, the case is still pending against Defendant Government.

1. Petitioner asks that this Court grant her petition to settle her case with defendants Berkeley Medical Center entities and Dr. Purohit.

2. Petitioner asks the Court to approve Ms. Weese's report.

3. Petitioner asks that the fee of the Guardian Ad Litem be approved and paid by the settlement funds.

4. The settlement has been agreed by the parties to be confidential and petitioner asks that this Court to seal the documents pertaining to this petition and those attached hereto, specifically Attachments A – E.

5. Petitioner attaches a copy of the Release and Agreement upon which the parties have agreed. (Attachment A)

6. Petitioner attaches hereto a copy of the Aleyah Maria Ferguson Irrevocable First Party Special Needs Trust and asks that this Court approve the same. (Attachment B)

7. Petitioner also attaches hereto a copy of the Settlement planning documents from Mr. Duvall. (Attachment C)

8. The Petitioner and Forge Consulting, LLC have engaged Heather Dean Myers, Esq. to prepare the necessary trust documents and the engagement letter is attached hereto. (Attachment D)

9. The Petitioner asks that the Statement of Account and Distribution of Funds as set out therein be approved. (Attachment E)

Respectfully submitted,

PAULSON & NACE, PLLC

/s/ Barry J. Nace

Barry J. Nace, Bar No. 7313

1615 New Hampshire Ave., NW

Washington, DC 20009

202-463-1999 – Telephone

202-223-6824 – Facsimile

[bjn@paulsonandnace.com](mailto:bjn@paulsonandnace.com)

*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 5<sup>th</sup> day of April, 2017, I caused a true and exact copy of the foregoing to be served via CM/ECF upon:

D. Michael Burke, Esq.  
Burke, Schultz, Harman & Jenkinson  
PO Box 1938  
Martinsburg, WV 25401  
Tele: (304) 263-0900  
Fax: (304) 267-0469  
[dmburke@burkeandschultz.com](mailto:dmburke@burkeandschultz.com)

Erin M. Tison, Esq.  
United States of America  
United States Attorney's Office  
PO Box 591  
Wheeling, WV 26003  
Phone: (304) 234-0100  
Fax: (304) 234-0112  
[Erin.tison@usdoj.gov](mailto:Erin.tison@usdoj.gov)

Timothy R. Linkous, Esq.  
Margaret Miner, Esq.  
Shuman, McCuskey & Slicer, PLLC  
1445 Stewartstown Road, Suite 200  
Morgantown, WV 26505  
Phone: (304) 291-2702  
Fax: (304) 291-2840  
[tlinkous@shumanlaw.com](mailto:tlinkous@shumanlaw.com)  
[mminer@shumanlaw.com](mailto:mminer@shumanlaw.com)

Christine S. Vaglienti, Esq.  
Garland Nagy, Esq.  
WVUH System, Inc.  
Legal Services  
1238 Suncrest Towne Centre Drive  
Morgantown, WV 26505  
Phone: (304) 598-4199  
Fax: (304) 598-9888  
[vaglientic@wvumedicine.org](mailto:vaglientic@wvumedicine.org)  
[garland.nagy@wvumedicine.org](mailto:garland.nagy@wvumedicine.org)

Matthew P. Moriarty, Esq.  
Courtenay Youngblood Jalics, Esq.  
Tucker Ellis LLP  
950 Main Avenue Suite 1100  
Cleveland, OH 44113-7213  
Phone: (216) 592-5000  
Fax: (216) 592-5009  
[MMoriarty@tuckerellis.com](mailto:MMoriarty@tuckerellis.com)  
[courtenay.jalics@tuckerellis.com](mailto:courtenay.jalics@tuckerellis.com)

/s/ Barry J. Nace  
Barry J. Nace, Esq.